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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,265	02/10/2004	Detlef Ludwig	15804-0117	1272
24267	7590	09/08/2005	EXAMINER	
CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210			HUYNH, KHOA D	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/775,265

Applicant(s)

LUDWIG, DETLEF

Examiner

Khoa D. Huynh

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3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/19/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Objections*

1. Claim 8 is objected to because of the following informalities: lines 4-5, the recitation "a tailing value" should read --the tailing value--. Appropriate correction is suggested.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the penultimate dispensing step" in line 4. There is insufficient antecedent basis for this limitation in the claim.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, as presently understood and given the broadest reasonable interpretations, are rejected under 35 U.S.C. 102(b) as being anticipated by Poore (4890774).

The Poore reference discloses an apparatus (10) for dispensing a specific minimum amount of a liquid into a container to fill the container. The apparatus allows the amount of dispensed substance (soda) to be measured and the filling process is terminated by the closing of a valve (at 12) as soon as the amount of the dispensed substance has reached a final value. The Poore reference also discloses (col. 2, lines 30-35; col. 3, lines 15-31) that dispensing is initially (the first step) stopped with the valve is closed to interrupt the filling process to allow the dissipation of foam. Such interruption, inherently, provides the determination of the tailing (the excess fluid in the nozzle 14) that occurs during the closing of the valve (at 12). Then (in a subsequence step) the valve is opened to permit resumption of the filling process with the final value for terminating the subsequence dispensing step being established a factoring-in a tailing rate (the flow of the excess liquid in the nozzle 14) of the liquid that was determined in the first filling step or any of the subsequence filling step or an average of tailing rates determined in the precedent steps in the series during the closing of valve.

Regarding claims 1-5, the method as claimed would be inherent during the normal use and operation of the Poore device.

6. Claims 1 and 6-8, as presently understood and given the broadest reasonable interpretations, are rejected under 35 U.S.C. 102(b) as being anticipated by Muscara (5718268).

The Muscara reference discloses an apparatus (10) for dispensing a specific minimum amount of a liquid into containers to fill the containers. The

apparatus allows the amount of dispensed substance (paint) to be measured and the filling process is terminated by the closing of a valve (at 11) as soon as the amount of the dispensed substance has reached a final value. The Muscara reference also discloses (col. 2, lines 51-67; col. 3, lines 1-3) that dispensing is initially (the first step) stopped with the valve is closed to interrupt the filling process. Such interruption, inherently, provides the determination of the tailing (the excess fluid in the nozzle 45) that occurs during the closing of the valve (at 11). Then (in a subsequence step) the valve is opened to permit resumption of the filling process with the final value for terminating the subsequence dispensing step being established a factoring-in a tailing rate (the flow of the excess liquid in the nozzle 14) of the liquid that was determined in the first filling step in the series during the closing of valve. The Muscara reference also discloses that, after the first container has been filled, filling another container could be done in a single step (col. 3, lines 13-29) with the final value for terminating the single dispensing step in filling the additional container being established in consideration of the desired minimum amount of the substance and by factoring in a tailing value determined during the filling of the first container.

Regarding claims 1, 6 and 7, the method as claimed would be inherent during the normal use and operation of the Muscara device.

The Muscara reference also discloses that, after the first container has been filled, the apparatus will continue to fill other containers (col. 2, lines 65-67; col. 3, lines 1-29), in each case with the respective final value for terminating the

filling process concerned being established in consideration of the desired minimum amount of the substance and by factoring in a tailing value determined in a preceding filling process. Regarding claim 8, the method as claimed would be inherent during the normal use and operation of the Muscara device.

### ***Conclusion***

7. It is also noted that applicant's invention as claimed could have similar interpretations to the process of filling a gasoline tank of an automobile. Such process involves the steps of dispensing a liquid (fuel) into the tank from a fuel nozzle having a valve, wherein the valve is closed (when the tank nearly at the full level, the conventional automatic shut-off feature will closed the valve) to interrupt the filling process. Such interruption, inherently, provides the determination of the tailing (the excess fuel in the nozzle) that occurs during the closing of the valve. Then (in a subsequence step) the valve is opened (or activated by the user) to permit (topping off or) resumption of the filling process (as many times as needed) with the final value (when the tank is full) for terminating the subsequence dispensing step being established a factoring-in a tailing rate (the flow of the excess fuel in the nozzle 14 each time the valve is closed) of the liquid that was determined in the first filling step in the series during the closing of valve.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Koblasz et al. was cited to show a filling apparatus which allows the dispensing of a liquid into a container, then the interruption the filling process and subsequently the resumption of the filling process. Graffin ('471) was cited to show a

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method of filling receptacle by factoring-in a tailing value. Bethke and Arnemann were cited to show an apparatus for filling and topping off containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa D. Huynh  
Primary Examiner  
Art Unit 3751

HK  
09/01/2005